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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. PAUL MATTHEW ALLEE, Defendant and Appellant.	B264929 (Los Angeles County Super. Ct. No. BA379679)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura F. Priver, Judge. Affirmed.

J. Kahn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Paul Matthew Allee of second degree murder for the shooting death of his girlfriend, Enedine Vigil. In a continued jury trial Allee was found sane at the time of the offense. Allee was sentenced to an aggregate indeterminate state prison term of 40 years to life. On appeal Allee contends the finding he was sane must be reversed because the evidence was legally insufficient and, alternatively, because the court failed to instruct the jury during the sanity trial that he was facing a life sentence for murder. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Allee was charged with the murder of Vigil in an information filed June 2, 2011. (Pen. Code, § 187, subd. (a).) The information specially alleged Allee had personally and intentionally discharged a firearm (a handgun) during the commission of the offense, causing great bodily injury or death. (Pen. Code, § 12022.53, subd. (d).)

Allee was found not competent to stand trial and sent on two occasions to Patton State Hospital for treatment with psychotropic medication. Approximately one year later the court found Allee's competency had been restored, and criminal proceedings were reinstated. On May 13, 2014 Allee entered a dual plea of not guilty and not guilty by reason of insanity.

On March 25, 2015 the jury found Allee guilty of second degree murder and found true the special firearm-use enhancement allegations. On April 6, 2015 the jury found Allee was sane at the time of the commission of the criminal offense.

1. *Evidence at the Guilt Phase of Trial*

Vigil was shot to death in the early morning hours of January 4, 2011. After paramedics found Vigil's body in her apartment complex hallway, police officers forced their way into her apartment where Allee was sitting at a desk, typing on a computer keyboard and opening and closing the CD drive tray. A handgun was on the desk. Allee did not respond to the officers' repeated commands to raise his hands. At one point Allee said, "You're not real. You're not here." Allee also said, "I can't believe I did this."

Ultimately, after Allee started to stand, the officers used a beanbag shotgun and then a Taser to subdue him and place him under arrest.

Gunshot residue was found on Allee's hands. DNA on the handgun (a .357-magnum revolver that Allee had purchased the prior year) matched Allee's. Vigil's autopsy disclosed she had been shot six times; three of the shots were fatal. Forensic analysis determined that two bullets removed during the autopsy and six cartridge cases and two expended bullet fragments found in the apartment were all fired from this handgun.

A bartender testified Vigil and Allee were regulars at a neighborhood bar in 2010, patronizing the establishment three or four times a week. On several occasions the bartender noticed Vigil crying and Allee using an aggressive tone when speaking to her.

Allee did not testify on his own behalf or present any other witness testimony during the guilt phase of the trial.

2. *The Sanity Trial*

As the party with the burden of proof, Allee began the evidentiary presentation at the sanity trial.[1] The defense theory was that Allee had shot what he believed was a demon, acting on instructions from a voice in his head. Three witnesses were offered to support the insanity claim: Sheiveh Jones, a friend of Allee's from college; Detective Chris Gable, the investigating officer; and Dr. Rose Marie Pitt, a forensic psychiatrist. Jones described Allee as appearing overly animated or agitated at a party three weeks before the murder and said he had talked about a single world bank taking over the world. She told her husband there seemed to be something wrong with Allee. Gable testified Allee had acted surprised when told Vigil was dead. It was stipulated that Allee had placed a call to Vigil's cell phone several hours after the shooting.

Dr. Pitt, Allee's principal witness, opined Allee suffered from a psychotic disorder and did not understand the nature of his act or its wrongfulness. Before forming her

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[1] The parties stipulated that all of the evidence from the guilt phase of the trial could be considered by the jury in determining Allee's sanity at the time of the offense.

opinion Dr. Pitt met with Allee on four or five occasions for 13 hours and had reviewed five or six binders of material, but not the entirety of the law enforcement "murder book," and a video recording that had been taken when police officers arrived at the crime scene. Dr. Pitt explained that Allee had been sent to Patton State Hospital on two occasions for psychosis and had been treated there with antipsychotic medication. The video recording, in which Allee appeared completely nonresponsive to the officers while making several bizarre statements, was consistent with symptoms Allee demonstrated at Patton and with schizophrenia. Allee had told Dr. Pitt that he heard voices while sitting at his computer prior to the shooting, that Vigil had been taking a bath but was transformed into a demon when she came out of the bathroom, that the demon was trying to break his mind and that a voice then told him to get a gun and shoot the demon. Dr. Pitt did not believe Allee was feigning mental illness. To the contrary, Allee denied that he was mentally ill and also denied that Vigil was dead, indicating to Dr. Pitt that he did not want to be identified as mentally disturbed. On cross-examination Dr. Pitt acknowledged that the only evidence of hallucinations or delusions came from Allee himself and that he had no history of psychiatric hospitalization or psychotic symptoms prior to the day of the shooting. She also confirmed that Allee had not told police officers he had shot a demon.

The People also presented three witnesses: Los Angeles Sheriff's Deputy Victor Suarez, criminologist Jose Gonzalez, and forensic psychiatrist Dr. Gordon Plotkin. Suarez testified he had been the mental health liaison deputy on the floor housing mental health inmates at the Twin Towers Correctional Facility for three years and was in that position when Allee was initially arrested and jailed. Allee was on Suarez's floor for approximately 18 months. During that time Allee seemed to function "quite normally," "behaved normal, nothing out of the ordinary." Gonzalez identified powder found in Allee's apartment following his arrest as containing cocaine and amphetamine.

Dr. Plotkin testified Allee may have a major mental disease, disorder or defect: "He probably does. He may have one. I'm not really sure." For purposes of his opinion

in the case, Dr. Plotkin "defer[red] to the belief that he has one so that I could do the rest of the assessment." Dr. Plotkin then opined Allee did not meet either prong of California's test for legal insanity—that is, that he either did not understand what he was doing at the time of the crime or did not understand that he was doing something wrong. Dr. Plotkin doubted Allee was suffering from delusions and believed Allee was malingering, noting that Allee said it was his girlfriend who ran out the door during the incident, not a demon, and that Allee had not reported hallucinations while at Patton State Hospital. As further support, Dr. Plotkin observed that Allee had fired six shots at Vigil—all that the revolver would hold—but did not reload the gun or attempt to flee from the demon; instead he went to his computer. Dr. Plotkin also testified Allee told him he had smoked marijuana and snorted a line of Adderall (a combination of two stimulant drugs) and cocaine on the night of the killing, which suggested the crime was a product of drug use, not mental illness.

DISCUSSION

1. *California's Test for Insanity, Burden of Proof and Standard of Review*

Penal Code section 25, subdivision (b), provides the defense of insanity "shall be found by the trier of fact only when the [defendant] proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." Although the statute uses the conjunctive "and," rather than the disjunctive "or," the Supreme Court has recognized that section 25, subdivision (b), establishes two distinct and independent bases on which a verdict of not guilty by reason of insanity may be returned. (*People v. Lawley* (2002) 27 Cal.4th 102, 170; *People v. Skinner* (1985) 39 Cal.3d 765, 769; see *People v. Elmore* (2014) 59 Cal.4th 121, 140.) The defendant's incapacity to understand the nature and quality of his or her act or to know it was morally or legally wrong "must be based on a mental disease or defect even though that requirement is not specifically mentioned in [Penal Code section] 25, subd[ivision] (b).'" (*People v. Blakely* (2014) 230 Cal.App.4th 771, 774.) The defendant's insanity need not

be permanent to establish the defense; the relevant inquiry is whether he or she was insane at the time the offense was committed. (*People v. Kelly* (1973) 10 Cal.3d 565, 577.) "A person suffering from a delusion that causes him to fear that another is attempting to take his life is legally insane if the facts perceived as the product of his delusion would legally justify his acting in self-defense." (*People v. Leeds* (2015) 240 Cal.App.4th 822, 829.)

Insanity is a plea raising an affirmative defense to the crime charged. (*People v. Hernandez* (2000) 22 Cal.4th 512, 522.) The burden is on the defendant to prove by a preponderance of the evidence he or she was not sane at the time of the offense. (*People v. Elmore*, *supra*, 59 Cal.4th at pp. 144-145; *Hernandez*, at p. 521.) Accordingly, "before we can overturn the trier of fact's finding to the contrary, we must find as a matter of law that the court could not reasonably reject the evidence of insanity." (*People v. Skinner* (1986) 185 Cal.App.3d 1050, 1059; see *In re Dennis* (1959) 51 Cal.2d 666, 674 [jury finding rejecting defense of insanity should be reversed on appeal only when "the evidence is uncontradicted and entirely to the effect that the accused is insane"]; cf. *Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838 ["where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law"].)

2. *Allee Was Not Entitled to a Finding He Was Not Sane at the Time of the Offense*

Dr. Pitt's testimony was plainly sufficient for the jury to find that Allee suffered from a serious mental disorder and killed Vigil based on his delusional belief she was a demon that threatened him with imminent danger or was otherwise necessary and not morally wrong. However, as discussed, that opinion was contradicted by Dr. Plotkin's conclusion Allee was not legally insane. While Allee gives lip service to the appropriate standard of review and argues Dr. Plotkin's opinion should be disregarded because it was purportedly based on groundless assumptions, in reality he is simply asking this court to reweigh the conflicting expert testimony. That is not the proper task of an appellate

court: It was for the jury to evaluate the testimony of the two experts, as well as the bases for their opinions, along with the other evidence presented, and to make the sanity determination. (*People v. Chavez* (2008) 160 Cal.App.4th 882, 891; see *People v. Drew* (1978) 22 Cal.3d 333, 351 [finding of sanity upheld even though prosecution presented no evidence at the sanity trial; the jury could have reasonably rejected the unanimous psychiatric opinion that the defendant was insane "on the ground that the psychiatrists did not present sufficient material and reasoning to justify that opinion"].)

3. *The Court Was Not Required To Instruct the Jury that Allee Faced Life Imprisonment for His Crime*

a. *CALCRIM No. 3450*

In *People v. Moore* (1985) 166 Cal.App.3d 540 (*Moore*) this court held, whenever requested by the defense or jury at a sanity trial, the judge should give an instruction explaining a verdict of not guilty by reason of insanity does not mean the defendant will be released from custody as if he or she had been found not guilty of the criminal act itself but will remain placed in a hospital for the mentally disordered or equivalent facility or in outpatient treatment until his or her sanity has been fully restored or until the defendant has been confined for a period equal to the maximum period of imprisonment that could have been imposed upon a finding of guilty. (*Id*. at pp. 556-557.) However, we explained, the jury must also be admonished that what happens to the defendant may not be considered in determining whether the defendant was sane at the time of the crime. (*Ibid*.; accord, *People v. Dennis* (1985) 169 Cal.App.3d 1135, 1140-1141 [upon request a defendant is entitled to have the jury instructed regarding the consequences of a finding of not guilty by reason of insanity]; see *People v. Kelly* (1992) 1 Cal.4th 495, 538 [defendant neither requested nor objected to giving an instruction based on *Moore*; "[g]iven the instruction's intent to protect the defense, we do not find it error of which the defendant can complain to give it . . . and certainly not prejudicial error"].)

The specific language for the instruction proposed in *Moore* was based on Penal Code section 1026 and the California Supreme Court's decision in *People v. Morse* (1964) 60 Cal.2d 631, 648, which set forth an instruction to explain the consequences of a

sentence of life imprisonment during the penalty phase of capital case, and was provided only for guidance of the trial court in the event of a retrial of the sanity issue in the matter before us. (*Moore, supra*, 166 Cal.App.3d at p. 557.) We encouraged the appropriate committees and organizations charged with drafting and approving jury instructions to improve on our initial version for use in other cases. (*Ibid*.)

Accepting that invitation the Los Angeles Superior Court CALJIC committee prepared CALJIC No. 4.01, "Effect of Verdict of Not Guilty by Reason of Insanity," adapted from *Moore, supra*, 166 Cal.App.3d 540, and thereafter the Judicial Council approved CALCRIM No. 3450, "Insanity: Determination, Effect of Verdict," which includes both the instructions regarding the burden of proof and legal standard for determining the issue of insanity itself and the explanation an insanity verdict will result in the defendant's commitment to a mental hospital or outpatient treatment program. (See generally *People v. DeHoyos* (2013) 57 Cal.4th 79, 146 ["[t]he purpose of CALJIC No. 4.01 is to ensure the jury does not improperly find a defendant sane based on a fear that the defendant will otherwise 'walk free'"].) Both CALJIC No 4.01 and CALCRIM No. 3450 state there is no sua sponte duty to inform the jury of the consequences of an insanity verdict.

b. *The jury was adequately instructed on the consequences of a finding of not guilty by reason of insanity*

The trial court instructed Allee's sanity phase jury with CALCRIM No. 3450. As given, that instruction stated in part, "If you find the defendant was legally insane at the time of his crime, he will not be released from custody until the court finds he qualifies for release under California law. Until that time he will remain in a mental hospital or outpatient treatment program, as appropriate. He may not, generally, be kept in a mental hospital or outpatient program longer than the maximum sentence available for his crime. If the State requests additional confinement beyond the maximum sentence, the defendant will be entitled to a new sanity trial before a new jury. Your job is only to decide whether the defendant was legally sane or insane at the time of the crime. You must not speculate as to whether he is currently sane or may be found sane in the future. You must

not let any consideration about whether—about where the defendant may be confined, or for how long, affect your decision in any way."

Allee neither objected to the instruction nor requested it be modified in any respect. Nonetheless, Allee now contends the trial court had a sua sponte obligation to modify that Judicial Council-approved instruction to inform the jury Allee's crime carried an indeterminate life sentence. (See Pen. Code, §§ 190, subd. (a) [second degree murder punishable by imprisonment in state prison for a term of 15 years to life]; 12022.53, subd. (d) [25-year-to-life enhancement for personal use of a firearm causing great bodily injury or death].) According to Allee, that additional explanation was necessary to ensure the jurors would not erroneously find Allee sane based on the belief an insanity finding would result in his "precipitous release."

As Allee argues, the trial court must instruct the jury on all general principles of law necessary to properly perform its function: "'"It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citation.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case."'" (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) Here, CALCRIM No. 3450 fully and fairly instructed the jury on the applicable law—both advising it Allee would not be released from custody if found legally insane until a court determined he was qualified for release and cautioning it not to speculate about how long Allee might be confined. As written and given, CALCRIM No. 3450 adequately protected Allee from a jury finding of sanity based on a concern he would soon be at large in the community. (See *People v. DeHoyos*, *supra*, 57 Cal.4th at p. 146; *People v. Kelly*, *supra*, 1 Cal.4th at p. 538.)

Allee cites no authority to support his proposed modification of CALCRIM No. 3450, and we are aware of none. Moreover, the new language suggested—specifically informing the jury the sentence for second degree murder committed by use of a firearm is 40 years to life—is in the nature of a pinpoint or amplifying instruction,

relating the facts of the particular case to the governing principles of law. Even if the court might have had a duty to include this additional language in CALCRIM No. 3450 if requested—a somewhat doubtful proposition—absent a request, the court had no sua sponte obligation to do so. (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1348 [“‘“[g]enerally, a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language”’”]; *People v. Guiuan* (1998) 18 Cal.4th 558, 570 [same]; see also *People v. Anderson* (2011) 51 Cal.4th 989, 997-998 [court is not required to give pinpoint instructions sua sponte]; *People v. Saille* (1991) 54 Cal.3d 1103, 1117 [“‘“pinpoint” instructions are not required to be given *sua sponte* and must be given only upon request’”].)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

GARNETT, J.*

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* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.